IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 611 (S/B) of 2002
(Old No. 285 of 1999)

Pheru Lal aged about 33 years
s/o Late Munnu Lal
R/o C/o Shri Ram Prasad (Conductor)
Ghasiyari Mandi Tanakpur
District Nainital ... Petitioner

Versus

The State of Uttar Pradesh through
Secretary Transport
Civil Secretariat
U.P. Lucknow & others ... Opposite Parties

Sri Lalit Belwal, learned counsel for the petitioner
Sri A.N. Sharma, learned counsel for the respondent

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the judgment and order dated 05.11.1998 passed by Opp. Party No. 5 contained in Annexure No. 1 to the writ petition.

2. Brief facts of the case according to the petitioner are that petitioner was appointed as Conductor by Regional Manager, Uttar Pradesh State Road Transport Corporation (UPSTRC), Nainital- Respondent No.4 on 04.07.1998. On 11.05.1990, while he was working as the Conductor of the Bus No. UGP-4351 on the Rudrapur-Agra route and making entries on the way bill, the inspecting team of the UPSRTC entered the Bus for the purposes of inspection. There were about 34-½ passengers on the Bus at the time of inspection and according to the report of the Traffic Superintendent only two and a half entries had been made in the waybill. On 26.07.1990, the petitioner received the order of suspension alongwith a copy of the charge sheet passed by Opp. Party No.4 suspending him with immediate effect on four grounds namely (1) Non entry of

-32- tickets in the waybill on 11.05.1990 when the Bus was moving towards Kichha from Rudrapur (2) trying to embezzle the Corporation's income, (3) acting in contravention to rules and (4) acting against the provisions of the service rules. It has been alleged that no preliminary enquiry or show cause notice was ever served on the petitioner prior to his suspension and he had continued to work normally between 11.05.1990 to 26.07.1990 under the UPSRTC without any lapse on duty. The petitioner sent his representation dated 24.08.1990 to the said chargesheet in which he dined the charges. Thereafter, the enquiry officer submitted his report dated 23.11.1990 wherein the petitioner was held guilty to charges framed in the charge sheet. Thereafter, the petitioner was served a show cause notice as to why he should not be removed from service in view of the report of the enquiry officer on 29.11.1990 to which the petitioner sent a detailed representation dated 05.01.1991. The Opp. Party No.4 after perusing the evidence on record vide his order dated 09.01.1991 passed the order of dismissal of the petitioner from the service. Aggrieved by the order dated 09.01.1991, the petitioner made an appeal dated 22.03.1991 to the Dy. General Manager, UPSRTC, Bareilly-Respondent No.3, which was rejected vide order dated 28.08.1991. Being aggrieved, the petitioner preferred a claim petition before State Public Services Tribunal, Lucknow – Opp. Party No.5. The Opp. Party No.5 after perusing the entire evidence on record vide his judgment and order dated 05.11.1998 dismissed the claim petition of the petitioner. Feeling aggrieved, the petitioner has come up in the writ petition.

3. We have heard learned counsel for the parties and perused the entire evidence on record.

4. The Tribunal after perusing the evidence on record found that no charge of embezzlement was proved, no amount was deposited and the entry was not made in the waybill and further some entries were missing. On this basis, the Tribunal has drawn the inference that the petitioner intended to embezzle that amount. The Tribunal fell into error in not taking into account the fact that when the tickets were distributed from the ticket bags and the amount was available in the bag of the conductor, then how the intention of the petitioner could be malafide for embezzlement of the amount. Since, the charges were found proved of not making the entries into the waybill, therefore, there was no proof of charge relating to embezzlement is made out against the petitioner.

5. Therefore, in our opinion, the punishment of dismissal is too harsh and shocking in nature in case of such a pity lapse on the part of the petitioner. Therefore, the impugned order passed by Public Service Tribunal dated 05.11.1998 as well as the removal order dated 09.01.1991 are set aside. **We modify the punishment in the following terms**:-

1. *The petitioner shall not be given back wages and salary during the suspension period*
2. *Stoppage of to increments without cumulative effect, however, for the other benefits, the petitioner shall be deemed to have continued in service.*

6. With the aforesaid observation, the petition is disposed of finally.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

22.02.2006
R. Dang